

AMENDED IN SENATE JANUARY 6, 2014

**SENATE BILL**

**No. 477**

---

**Introduced by Senator Steinberg**

February 21, 2013

---

*An act relating to the Political Reform Act of 1974. An act to amend Sections 9998.1, 9998.6, and 9998.8 of, to add Sections 9998.1.5, 9998.2.5, 9998.10, and 9998.11 to, and to repeal and add Section 9998.2 of, the Business and Professions Code, relating to foreign labor contractors.*

LEGISLATIVE COUNSEL'S DIGEST

SB 477, as amended, Steinberg. ~~Political Reform Act of 1974: contributions; ballot measures.~~ *Foreign labor contractors: registration.*

*Existing federal law permits certain aliens to engage in employment in the United States under specified conditions. Existing state law regulates the services of foreign labor contractors, as defined, with regard to contracts, recruitment procedures and representations, and information as to terms and conditions of employment. Existing law provides that any person who violates or induces a violation of the latter provisions is guilty of a misdemeanor. Existing law also permits any person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and authorizes recovery of damages, costs, and reasonable attorney's fees, in an amount not less than \$500, if the aggrieved person prevails on the action.*

*Under existing state law, the Division of Labor Standards Enforcement in the Department of Industrial Relations, under the direction of the Labor Commissioner, enforces and administers the licensing and supervision of farm labor contractors, as defined.*

*This bill would change the definition of a foreign labor contractor to mean a person who performs foreign labor contracting activity, as defined, and would require a foreign labor contractor to register with the Labor Commissioner and would impose certain conditions for registration, including payment of specified fees. The bill would require the commissioner to enforce and administer the registration and supervision of foreign labor contractors, and would authorize the commissioner to adopt regulations or policies and procedures to implement these provisions. The bill would prohibit a person from knowingly entering into an agreement for the services of a foreign labor contractor that is not registered with the commissioner. The bill would also require foreign labor contractors to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against the foreign labor contractor, as a condition of registration, as specified. The bill would further require persons knowingly using the services of foreign labor contractors to obtain foreign workers to disclose specified information to the commissioner.*

*The bill would require a foreign labor contractor to disclose in writing to each foreign worker who is recruited for employment certain information, as specified. The bill would prohibit a foreign labor contractor and its agent from assessing a fee or cost to a foreign worker for foreign labor contracting activities. The bill would also prohibit charging a foreign worker with any costs or expenses not customarily assessed against similarly situated workers, and would limit the amount of housing costs charged to the foreign worker to the market rate for similar housing. The bill would prohibit requiring a foreign worker to pay any costs or expenses prior to commencement of work. The bill would prohibit additional requirements or changes to the terms of the contract originally provided to and signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes, and would require the specific consent of the foreign worker, as provided, to each additional requirement or change.*

*The bill would authorize a civil penalty for violations of these provisions, would authorize the commissioner or a person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and would authorize recovery of damages, costs, and reasonable attorney's fees, as specified, including enforcement of liability against the bond deposited with the commissioner. The bill*

would exempt a person from joint and several liability for an act or omission by a foreign labor contractor if the person is using a registered foreign labor contractor's services. The bill would also exempt a person who uses the services of a registered foreign labor contractor from misdemeanor liability for an act or omission by the foreign labor contractor. Because this bill would expand the scope of the provisions regulating foreign labor contractors, a violation of which is a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Political Reform Act of 1974 imposes various limitations on contributions made to, or accepted by, candidates for elective office and campaign committees that support or oppose candidates and ballot measures.~~

~~This bill would declare the intent of the Legislature to enact legislation that would prohibit a political campaign committee from accepting large contributions made for the purpose of supporting the qualification of a statewide initiative ballot measure until the committee has first received a significant number of small individual contributions made for the same purpose, thereby demonstrating a sufficient degree of public support for the proposed initiative measure.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature finds and declares all of the
- 2     following:
- 3     (a) Foreign labor contractors are increasingly relied upon to
- 4     facilitate the movement of labor from one country to another.
- 5     California is the leading destination state in the United States for
- 6     temporary foreign workers. As of January 2011, there were
- 7     130,000 temporary foreign workers in California.
- 8     (b) While many foreign labor contractors behave ethically and
- 9     are engaged in lawful conduct, some foreign labor contractors

1 *are often complicit with, or are directly involved in, the illegal*  
2 *trafficking of foreign workers.*

3 *(c) Unscrupulous foreign labor contractors often charge*  
4 *exorbitant fees for their services, force foreign workers into debt*  
5 *bondage, falsify documents, and deceive foreign workers about*  
6 *the terms and conditions of work, thereby increasing their*  
7 *vulnerability to human trafficking.*

8 *(d) The incidence of known human trafficking cases involving*  
9 *foreign labor recruiters is increasing dramatically in the United*  
10 *States. Stricter regulation of foreign labor contractors will ensure*  
11 *the integrity of the Californian economy, which is undermined*  
12 *when unregulated persons conspire to fraudulently deceive foreign*  
13 *workers about the terms and conditions of work.*

14 *(e) California already regulates farm labor contractors through*  
15 *a comprehensive licensing system and provides some oversight of*  
16 *the activities of foreign labor contractors. This bill expands*  
17 *regulation of the activities of foreign labor contractors by the*  
18 *following:*

19 *(1) Requiring foreign labor contractors to register with the*  
20 *appropriate state agency.*

21 *(2) Requiring disclosure of the use of foreign labor contractors,*  
22 *and their agents, by persons seeking to employ foreign workers.*

23 *(3) Imposing penalties on a person using an unregistered foreign*  
24 *labor contractor to obtain foreign workers or employees.*

25 *(4) Expanding the remedies available to foreign workers*  
26 *aggrieved by the actions of foreign labor contractors and those*  
27 *acting in concert with them.*

28 *(f) It is the intent of the Legislature that the Labor Commissioner*  
29 *proceed as expediently as possible in reviewing applications for*  
30 *foreign labor contractor registration to ensure that workers may*  
31 *come to the United States for legitimate employment without undue*  
32 *delay.*

33 *SEC. 2. Section 9998.1 of the Business and Professions Code*  
34 *is amended to read:*

35 *9998.1. The following definitions are applicable to this chapter:*

36 *(a) "Person" includes any natural person, company, firm,*  
37 *partnership, partnership or joint venture, association, corporation,*  
38 *limited liability company, or sole proprietorship.*

39 *(b) —"Compensation" "Foreign labor contracting activity"*  
40 *means all forms recruiting or soliciting for compensation a foreign*

1 worker who resides outside of ~~remuneration~~ the United States in  
2 furtherance of that worker's employment in California, including  
3 when that activity occurs wholly outside the United States.  
4 "Foreign labor contracting activity" does not include the services  
5 of an employer, or ~~consideration for the provision of employment~~  
6 employee of an employer, if those services are provided directly  
7 to foreign workers ~~by a foreign labor contractor~~, solely to find  
8 workers for the employer's own use.

9 ~~(e) "Employment services" includes, but is not limited to,~~  
10 ~~procuring employment, marketing labor, or otherwise arranging~~  
11 ~~the employment or transportation, housing, and other living~~  
12 ~~accommodations for foreign workers either on behalf of those~~  
13 ~~workers or on behalf of another party.~~

14 ~~(d)~~  
15 (c) "Foreign worker" means any person seeking employment  
16 who is not a United States citizen *or permanent resident* but who  
17 is authorized by the federal government to work in the United  
18 States, including a person who engages in temporary  
19 nonagricultural labor pursuant to ~~Section 1101(a)(15)(H)(ii)(b)~~  
20 ~~101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and~~  
21 ~~Nationality Act. Act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(b)).~~

22 ~~(e)~~  
23 (d) "Foreign labor contractor" means any person who ~~for~~  
24 ~~compensation agrees to assist in securing~~ performs foreign labor  
25 contracting activity, including any person who performs foreign  
26 labor contracting activity wholly outside the United States, except  
27 that the term does not include any entity of federal, state, or local  
28 government. "Foreign labor contractor" does not include a person  
29 licensed by the Labor Commissioner as a talent agency under  
30 Chapter 4 (commencing with Section 1700) of Part 6 of Division  
31 2 of the Labor Code, or a person who ~~actually secures for or~~  
32 ~~provides employment services to foreign workers~~, obtained and  
33 maintains full written designation from the United States  
34 Department of State under Part 62 of Title 22 of the Code of  
35 Federal Regulations.

36 SEC. 3. Section 9998.1.5 is added to the Business and  
37 Professions Code, to read:

38 9998.1.5. (a) On and after July 1, 2015, a person acting as a  
39 foreign labor contractor shall register with the Labor  
40 Commissioner in accordance with the terms and procedures for

1 registration established by the commissioner by January 1, 2015.  
2 On and after August 1, 2015, the commissioner shall post on its  
3 Internet Web site the names and contact information for all  
4 registered foreign labor contractors and a list of the names and  
5 contact information for any foreign labor contractors denied  
6 renewal or registration.

7 (b) The Labor Commissioner may not register a person to act  
8 as a foreign labor contractor, and may not renew a registration,  
9 until all of the following conditions are satisfied:

10 (1) The person has executed a written application in a form  
11 prescribed by the commissioner, subscribed and sworn to by the  
12 person, and containing all of the following:

13 (A) A statement by the person of all facts required by the  
14 commissioner concerning the applicant's character, competency,  
15 responsibility, and the manner and means by which the person  
16 proposes to conduct operations as a foreign labor contractor if  
17 registered.

18 (B) The names and addresses of all persons, except bona fide  
19 employees on stated salaries, financially interested, either as  
20 partners, associates, or profit sharers, in the proposed operation  
21 as a foreign labor contractor, together with the amount of their  
22 respective interests.

23 (C) A declaration consenting to the designation by a court or  
24 the commissioner as an agent available to accept service of  
25 summons in any action against the registrant, if the registrant has  
26 left the jurisdiction in which the action is commenced or otherwise  
27 has become unavailable to accept service.

28 (2) The commissioner, after investigation, is satisfied as to the  
29 character, competency, and responsibility of the person.

30 (3) (A) The person has deposited with the commissioner a surety  
31 bond in an amount based on the size of the person's annual gross  
32 receipts from operations as a foreign labor contractor, as follows:

33 (i) For gross receipts up to five hundred thousand dollars  
34 (\$500,000), a fifty-thousand-dollar (\$50,000) bond.

35 (ii) For gross receipts of five hundred thousand dollars  
36 (\$500,000) to two million dollars (\$2,000,000), a  
37 one-hundred-thousand-dollar (\$100,000) bond.

38 (iii) For gross receipts greater than two million dollars  
39 (\$2,000,000), a one-hundred-fifty-thousand-dollar (\$150,000)  
40 bond.

1 (B) If the foreign labor contractor has been the subject of a final  
2 judgment in a year in an amount equal to that of the bond required,  
3 that contractor shall be required to deposit an additional bond  
4 within 60 days. The bond shall be payable to the people of the  
5 State of California and shall be conditioned on the foreign labor  
6 contractor complying with all the terms and provisions of this  
7 chapter and paying all damages occasioned to any person by  
8 failure to do so, or by any violation of this chapter, or false  
9 statements or misrepresentations made in the registration process.  
10 The bond shall also be payable for interest on wages and for any  
11 damages arising from violation of applicable orders of the  
12 Industrial Welfare Commission, and for any other monetary relief  
13 awarded to a foreign worker as a result of a violation of law by  
14 the foreign labor contractor.

15 (4) The person has paid to the commissioner a registration fee  
16 and a filing fee in a total amount the commissioner determines is  
17 sufficient to support the ongoing costs of the program.

18 (c) The commissioner may not register a person as a foreign  
19 labor contractor, if the person was found by a court, the Secretary  
20 of Labor, or the commissioner to have violated any of the following  
21 provisions:

22 (1) The federal Trafficking Victims Protection Act of 2000  
23 (Division A, Public Law 106-386), as amended.

24 (2) Sections 1682 to 1699, inclusive, of the Labor Code.

25 (3) Section 236.1 of the Penal Code.

26 (4) An applicable guest worker program.

27 SEC. 4. Section 9998.2 of the Business and Professions Code  
28 is repealed.

29 ~~9998.2. Every contract for the provision of employment~~  
30 ~~services to foreign workers shall be written in the primary language~~  
31 ~~of the foreign worker and shall include all material terms including,~~  
32 ~~but not limited to, any and all compensation or consideration to~~  
33 ~~be provided to the foreign worker in exchange for that worker's~~  
34 ~~labor or services, any wages, housing, transportation, other living~~  
35 ~~accommodations, and other benefits which are to be provided.~~

36 SEC. 5. Section 9998.2 is added to the Business and Professions  
37 Code, to read:

38 9998.2. (a) On and after July 1, 2015, a person who knows or  
39 should have known that the person is using the services of a foreign  
40 labor contractor to procure foreign workers or employees pursuant

1 to subdivision (b) of Section 9998.1 shall disclose this information  
2 to the Labor Commissioner in accordance with the terms and  
3 procedures established by the commissioner by January 1, 2015.

4 (b) The disclosure shall include, but is not limited to, the  
5 following:

6 (1) The name, address, and contact information of the person  
7 designated by the employer to work with a foreign labor contractor.

8 (2) A declaration consenting to the designation by a court of  
9 the commissioner as an agent available to accept service of  
10 summons in any action against the person, if the person has left  
11 the jurisdiction in which the action is commenced or otherwise  
12 has become unavailable to accept service.

13 (c) A person may not knowingly enter into an agreement for the  
14 services of a foreign labor contractor that is not registered under  
15 this chapter.

16 SEC. 6. Section 9998.2.5 is added to the Business and  
17 Professions Code, to read:

18 9998.2.5. (a) A foreign labor contractor shall ascertain and  
19 disclose in writing to each foreign worker who is recruited for  
20 employment in English and in the primary language of the foreign  
21 worker being recruited, at the time of the foreign worker's  
22 recruitment, the following information:

23 (1) The identity of the employer and the identity of the person  
24 conducting the recruiting on behalf of the employer, including any  
25 subcontractor or agent involved in the recruiting.

26 (2) A signed copy of the work contract, including all assurances  
27 and terms and conditions of employment, from the prospective  
28 employer for whom the foreign worker is being recruited, including  
29 the compensation to be paid, the place and period of employment,  
30 a description of the type and nature of employment activities, any  
31 withholdings or deductions from compensation, and any penalties  
32 for terminating employment.

33 (3) The type of visa under which the foreign worker is to be  
34 employed, the length of time the visa is valid, and the terms and  
35 conditions under which the visa will be renewed with a clear  
36 statement of whether the employer will secure renewal of the visa  
37 or if renewal must be obtained by the foreign worker, and any  
38 expenses associated with securing or renewing the visa.

39 (4) An itemized list of any costs or expenses to be charged to  
40 the foreign worker, including, but not limited to, the costs of



1 housing or accommodation, transportation to and from the  
2 worksite, meals, medical examinations, health care or safety  
3 equipment costs, and any other costs, expenses, or deductions to  
4 be charged the foreign worker.

5 (5) A statement, in a form specified by the Labor Commissioner,  
6 that does each of the following:

7 (A) States that no foreign labor contractor, or agent or employee  
8 of a foreign labor contractor, can lawfully assess any fee, including  
9 visa fees, processing fees, transportation fees, legal expenses,  
10 placement fees, and other costs to a foreign worker for foreign  
11 labor contracting activities, and that the employer may bear the  
12 costs or fees for the foreign labor contractor, but that these fees  
13 cannot be assessed to the foreign worker.

14 (B) Explains that no additional requirements or changes may  
15 be made to the terms of the contract originally provided by the  
16 foreign labor contractor and signed by the foreign worker, unless  
17 the foreign worker is provided at least 48 hours to review and  
18 consider the additional requirements or changes and the foreign  
19 worker gives specific consent, voluntarily and without threat of  
20 penalty, to each additional requirement or change.

21 (C) Describes the protections afforded the foreign worker by  
22 this chapter and by the federal Trafficking Victims Protection Act  
23 of 2000 (Division A, Public Law 106-386), as amended, and any  
24 applicable guest worker program, including relevant information  
25 about the procedure for filing a complaint under this chapter, and  
26 the telephone number for the national human trafficking resource  
27 center hotline.

28 (6) Any education or training to be provided or required,  
29 including the nature, timing, and cost of training and the person  
30 who will pay training costs, whether the training is a condition of  
31 employment, continued employment, or future employment, and  
32 whether the foreign worker will be paid or remunerated during  
33 the training period, including the rate of pay or remuneration.

34 (b) The foreign labor contractor shall file the disclosure  
35 required under subdivision (a) with the Labor Commissioner within  
36 seven business days of providing it to the foreign worker.

37 (c) A foreign labor contractor, or the agent, subcontractor, or  
38 employee of a foreign labor contractor, or a person using the  
39 services of a foreign labor contractor to obtain foreign workers  
40 or employees, may not assess any fee, including, but not limited

1 to, visa fees, processing fees, transportation fees, legal expenses,  
2 placement fees, and other costs, to a foreign worker for foreign  
3 labor contracting activities.

4 (d) A foreign worker may not be required to pay any costs or  
5 expenses that are not customarily assessed against all workers  
6 similarly employed in the United States. No costs or expenses shall  
7 be required to be paid by the foreign worker prior to the  
8 commencement of work. The amount charged for providing housing  
9 to the foreign worker shall be limited to market rate for similar  
10 housing.

11 (e) Additional requirements or changes shall not be made to  
12 the terms of the contract originally provided by the foreign labor  
13 contractor and signed by the foreign worker, unless the foreign  
14 worker is provided at least 48 hours to review and consider the  
15 additional requirements or changes and the foreign worker gives  
16 specific consent, voluntarily and without threat of penalty, to each  
17 additional requirement or change.

18 SEC. 7. Section 9998.6 of the Business and Professions Code  
19 is amended to read:

20 9998.6. ~~No~~A person ~~shall take~~ may not intimidate, threaten,  
21 restrain, coerce, discharge, or in any ~~action~~ manner discriminate  
22 against a foreign worker or a member of his or her family in  
23 retaliation for the foreign worker's exercise of any right under this  
24 chapter.

25 SEC. 8. Section 9998.8 of the Business and Professions Code  
26 is amended to read:

27 9998.8. (a) ~~Any~~A person who violates this chapter or who  
28 causes or induces another to violate this chapter is guilty of a  
29 misdemeanor punishable by a fine of not more than one thousand  
30 dollars (\$1,000), or imprisonment in the county jail for not more  
31 than six months, or both. A person shall not be liable under this  
32 subdivision for any act or omission by a foreign labor contractor  
33 engaged by the person if the foreign labor contractor was  
34 registered with the Labor Commissioner pursuant to Section  
35 9998.1.5 no later than the first day of engagement.

36 (b) A person who violates any provision of this chapter shall  
37 be subject to a civil penalty of no less than one thousand dollars  
38 (\$1,000) and no more than twenty-five thousand dollars (\$25,000)  
39 per violation, in addition to any other civil remedies available to  
40 the Labor Commissioner or an aggrieved person.

1     ~~(b)~~

2     ~~(c) Any~~ The commissioner or a person aggrieved by a violation  
3 of this chapter may bring an action for injunctive relief or damages,  
4 or both. If ~~do all of the person aggrieved prevails on the action,~~  
5 this person shall recover damages, costs, and reasonable attorney's  
6 fees, but in no case shall recovery be less than five hundred dollars  
7 (\$500). following:

8         (1) Bring an action for injunctive relief against a person who  
9 violates this chapter and, upon prevailing, recover costs and  
10 reasonable attorney's fees.

11         (2) Bring an action for damages, against a person who violates  
12 this chapter to recover the greater of all of his or her actual  
13 damages or five hundred dollars (\$500) per employee per violation  
14 for an initial violation, and one thousand dollars (\$1,000) per  
15 employee for each subsequent violation, and, upon prevailing in  
16 an action brought pursuant to this section, recover costs and  
17 reasonable attorney's fees.

18         (3) Enforce the liability on the bonds required under Section  
19 9998.1.5.

20     (d) A person shall not be jointly and severally liable for any act  
21 or omission by a foreign labor contractor engaged by the person  
22 if the foreign labor contractor was registered with the Labor  
23 Commissioner pursuant to Section 9998.1.5 no later than the first  
24 day of engagement.

25     (e) Nothing in this section shall be construed to preempt or alter  
26 any other rights or remedies, including any causes of action,  
27 available under any other federal or state law.

28     SEC. 9. Section 9998.10 is added to the Business and  
29 Professions Code, to read:

30         9998.10. The Labor Commissioner and the deputies and  
31 representatives authorized by the commissioner in writing may  
32 take assignments of actions on the bonds required under Section  
33 9998.1.5 by aggrieved persons and may prosecute the actions on  
34 behalf of persons who, in the judgment of the commissioner, are  
35 financially unable to employ counsel, in the same manner that  
36 claims are prosecuted under Section 98 of the Labor Code.

37     SEC. 10. Section 9998.11 is added to the Business and  
38 Professions Code, to read:

39         9998.11. The Labor Commissioner may adopt regulations or  
40 policies and procedures to implement the provisions of this chapter.

1     *SEC. 11. No reimbursement is required by this act pursuant*  
2     *to Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

10    ~~SECTION 1. It is the intent of the Legislature to enact~~  
11    ~~legislation that would prohibit a political campaign committee~~  
12    ~~from accepting large contributions made for the purpose of~~  
13    ~~supporting the qualification of a statewide initiative ballot measure~~  
14    ~~until the committee has first received a significant number of small~~  
15    ~~individual contributions made for the same purpose, thereby~~  
16    ~~demonstrating a sufficient degree of public support for the proposed~~  
17    ~~initiative measure.~~